

STATE FOREST TREE PLANTING CONTRACT  
2013 PLANTING SEASON  
COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF FORESTRY

**SET ASIDE FOR SMALL BUSINESSES**

Contract No. IFB # 411: #A13000-07

Issue Date: January 23, 2013

Commodity Code: 98852

Issuing Agency: Commonwealth of Virginia  
Department of Forestry  
900 Natural Resources Drive, Suite 800  
Charlottesville, VA 22903

Using Agency And/or Location  
Where Work Will Be Performed: Appomattox-Buckingham State Forest in the Counties of Appomattox  
and Buckingham.  
Cumberland State Forest in the County of Cumberland

Period of Contract: From: February 20, 2013 through March 31, 2013

All Inquiries For Information Should Be Directed To: Amy Ricotta, Purchasing Officer (434) 220-9009.  
For Technical Questions contact Tom Zaebst, Assistant State Forest Manager (804) 492-4121.

After completing Invitation for Bid Sheet (Page 1) and the Bid Form, this entire document should be enclosed in a separate envelope. Mark the outside as follows: "Sealed bid for the tree planting on commercial forestland in the Commonwealth of Virginia, Appomattox-Buckingham and Cumberland State Forests, IFB No. 411: #A13000-07 to be opened only at the VA Department of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22903 on **Tuesday, February 12, 2013 at 2:00 p.m.**"

In Compliance With This Contract And To All The Conditions Imposed Herein, The Undersigned Offers And Agrees To Furnish The Goods/Services Described At The Price(s) Indicated in Section 5 Pricing Schedule.

Name and Address of Firm:

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Signature in Ink

\_\_\_\_\_

Title: \_\_\_\_\_

FEI/FIN No. \_\_\_\_\_

Telephone No. \_\_\_\_\_

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- I. PURPOSE:** The purpose of this contract is to establish contract prices and a state forest tree planting contractor, herein called Contractors, for the planting of pine seedlings during the 2013 planting season on the Appomattox-Buckingham and Cumberland State Forests.

**II. SCOPE OF WORK**

**A. CONTRACTOR RESPONSIBILITIES AND RIGHTS**

1. **GENERAL:** Contractor agrees to furnish all labor, supervision, insurance, tools, and equipment in accordance with the terms and specifications of this agreement.
2. All equipment, supplies, and materials will be subject to inspection by the Department at any time during the contract.

The Contractor agrees to have personnel and full complement of delivery and support systems available and ready for work on or before March 12, 2013.

3. **SUB-CONTRACT:** No portion of this work shall be sublet to subcontractors without first securing written consent of the Department.
4. Consent by the Department to any such subletting shall not relieve the Contractor of full responsibility and liability for the work to be performed by the subcontractor.
5. **DAMAGE CLAIMS:** Should the Contractor receive notice of any damage claim, he will in turn notify the Department in writing within 10 days, nature of damage, and name and address of the person making the claim. The Contractor will also contact the person making the claim within 10 days to begin the process for resolution of the claim.
6. All appropriate certification and licensing required by the Environmental Protection Agency and Virginia Department of Agriculture and Consumer Services will be the responsibility of the Contractor. These will be valid for the period of this contract, and available for inspection by federal, state, and local authorities having jurisdiction over this project. Copies of these certificates, licenses, and permits will be made available to the Department upon request.
7. **INDEPENDENT CONTRACTORS:** The Contractor, his employees and agents are not to be, at any time, considered servants, agents, or employees of the Commonwealth of Virginia, nor any department or division thereof, but instead are considered to be independent contractors.
8. The Contractor agrees to comply with all laws, rules, and/or regulations applicable to the safe performance of such work, including the generality of the foregoing, Public Law 91-596, Title "Occupational Safety and Health Act of 1970."
9. **CONTRACTOR RIGHTS:** The Contractor reserves the right to halt planting operations when the Department or one of its representatives fails to meet their responsibilities as outlined in this agreement.

**B. DEPARTMENT RESPONSIBILITIES AND RIGHTS**

1. **INGRESS AND EGRESS:** The Department will allow right of ingress and egress for all employees, materials and equipment of the Contractor necessary to the project.
2. **TRACT DESIGNATION:** The Department will show the Contractor the tract to be planted and the boundaries where planting will stop. Tracts will be delineated by fire lines, flagging, boundary markers, or other satisfactory means.

3. DEPARTMENT RIGHTS: The Department reserves the right to halt the planting operation at any time when, in the opinion of the Department, the Contractor violates the contract or the Contractor's performance is unsafe or otherwise unsatisfactory.
4. The Department will treat those seedlings needed to control Pales Weevil prior to delivery to the planting crew.

C. DATES OF PLANTING

1. Tree planting will commence on February 20, 2013, and end not later than March 31, 2013.

The Contractor agrees to have personnel and full complement of delivery and support systems available and ready for work on or before March 12, 2013.

III. GENERAL TERMS AND CONDITIONS

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at [www.eva.virginia.gov](http://www.eva.virginia.gov) under "Vendors Manual" on the vendors tab.
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000, the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
  - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
  - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
- 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their (bids/proposals), (bidders/offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offeror), supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By submitting their (bids/proposals), (bidders/offerors) certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs** (Insert wording below appropriate to the solicitation type as indicated):

(For Invitation for Bids): Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.
- I. **CLARIFICATION OF TERMS:** If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.
- J. **PAYMENT:**
  - 1. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (Code of Virginia, § 2.2-4363).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
  - 1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
  - 2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such

certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

- K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, *APPLICABLE LAWS AND COURTS*, *ANTI-DISCRIMINATION*, *ETHICS IN PUBLIC CONTRACTING*, *IMMIGRATION REFORM AND CONTROL ACT OF 1986*, *DEBARMENT STATUS*, *ANTITRUST*, *MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS*, *CLARIFICATION OF TERMS*, *PAYMENT* shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. **QUALIFICATIONS OF (BIDDERS/OFFERORS):** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the services/furnish the goods and the (bidder/offeror) shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. The Commonwealth further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the Commonwealth that such (bidder/offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
    - a. By mutual agreement between the parties in writing; or
    - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
    - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and

records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia Vendors Manual. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offers) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the product offered is an equivalent product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.
- S. **TRANSPORTATION AND PACKAGING:** By submitting their (bids/proposals), all (bidders/offers) certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain this insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

**MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:**

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
  2. Employer's Liability - \$100,000.
  3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
  4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)
- U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site ([www.eva.virginia.gov](http://www.eva.virginia.gov)) for a minimum of 10 days.
- V. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.
- W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- X. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:** The eVA Internet electronic procurement solution, website portal [www.eVA.virginia.gov](http://www.eVA.virginia.gov), streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

Effective July 1, 2011, vendor registration and registration-renewal fees have been discontinued. Registration options are as follows:

1. eVA Basic Vendor Registration Service: eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
2. eVA Premium Vendor Registration Service: eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.

Vendor transaction fees are determined by the date the original purchase order is issued and are as follows:

1. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
2. For orders issued August 16, 2006 thru June 30, 2011, the Vendor Transaction Fee is:
  - a. DMBE-certified Small Businesses: 1%, capped at \$500 per order.
  - b. Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.
3. For orders issued July 1, 2011 thru June 30, 2012, the Vendor Transaction Fee is:
  - a. DMBE-certified Small Businesses: 0.75%, capped at \$500 per order.
  - b. Businesses that are not DMBE-certified Small Businesses: 0.75%, capped at \$1,500 per order.
4. For orders issued July 1, 2012 and after, the Vendor Transaction Fee is:
  - a. DMBE-certified Small Businesses: 1%, capped at \$500 per order.
  - b. Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, approximately 30 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.

- Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- Z. **SET-ASIDES:** This solicitation is set-aside for DMBE-certified small business participation only when designated "SET-ASIDE FOR SMALL BUSINESSES" in the solicitation. DMBE-certified small businesses are those businesses that hold current small business certification from the Virginia Department of Minority Business Enterprise. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received the DMBE small business certification. For purposes of award, bidders/offerors shall be deemed small businesses if and only if they are certified as such by DMBE on the due date for receipt of bids/proposals.
- AA. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, bidders/offerors shall state bid/offer prices in US dollars.
- BB. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not

allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

#### IV. SPECIAL TERMS AND CONDITIONS

##### A. PLANTING CREW

1. Crew will pick up all trash associated with the planting project and dispose of properly in an approved manner.

##### B. SEEDLING CARE

1. Bags and bundles containing seedlings will be kept closed and under shade at all times.
2. Seedlings in bags, bundles, and planters' tree bags will be kept moist at all times.
3. Planters will carry no more trees in hand than can be carried without roots drying out before planting.

##### C. PLANTING

1. Only one (1) seedling shall be planted in a hole.
2. The hole shall be in mineral soil free from duff or trash.
3. Seedlings are to be planted at root collar or deeper but not excessively deep: planting tool should be 8"x3" minimum. Tree roots will be a minimum of six (6) inches deep.
4. The tap root is to be planted without "J" rooting (turned more than 90 degrees).
5. Lateral roots are not to be twisted or balled up.
6. Seedlings shall stand at no more than 30 degrees of straight up and down.
7. The hole shall be filled in at both the bottom and top and packed firmly without injury to bark or seedling. (4 needle test of seedling to test tightness)
8. Seedlings are not to be planted in frozen soil or when air temperatures freeze root hairs.
9. Seedlings are to be planted at prescribed stocking. (538 trees per acre, approximately 9'x9' spacing)
10. Seedling roots shall not be beaten or otherwise damaged.
11. Trees coated with clay slurry should not be rinsed off.
12. Culling of seedlings will be done to Department specifications.
13. Pruning of excessive tap or lateral roots will be done only with prior approval of the Department representative on the tract.

- D. AWARD: The Department will make the award for each area to the lowest responsive and responsible bidder based on cost per acre. The purchasing office reserves the right to conduct any test it may deem advisable and to make all evaluations. The Commonwealth also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

##### E. MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT:

1. In 1987 a federal Circuit Court of Appeals issued a national injunction making tree planting contractors subject to the Migrant and Seasonal Agricultural Worker Protection Act. This ruling went into effect nationwide on January 7, 1988. The U.S. Department of Labor (DOL) is empowered to enforce the act. The act provides protection for migrant and seasonal workers in terms of their pay and the transportation and housing which the Contractor may provide.

Under this act, any person performing the duties of a tree planting contractor is required to obtain a Certificate of Registration from the DOL. Also, any employee of a registered tree planting contractor who is engaged in transporting planting labor on behalf of such contractor must obtain a Farm Labor Contractor Employee Certificate of Registration authorizing such activity. The

employee's certificate must show the name of the planting contractor for whom this activity is to be performed, the type of vehicle to be used for transport, and the inclusive dates for which the employee will perform this activity. Finally, if the Contractor agrees to house crew members, the housing must be inspected and approved by the county health department prior to occupancy.

Each registered contractor and contractor employee as described above must carry at all times while engaging in planting activities his/her Certificate of Registration or Farm Labor Contractor Employee Certificate as appropriate, and upon request shall exhibit that certificate to all persons with whom he/she intends to deal in an official capacity.

Application forms may be completed with the assistance of the Farm Placement Specialist at any Virginia Employment Commission Office. The U.S. Department of Labor will in turn issue a certificate to the applicant.

## 2. REQUIREMENT OF THE ACT EFFECTING THE LANDOWNER

The Act requires the tree planting contractor to make and keep the following records for each worker (regardless of the size of the crew) including name, permanent address, and social security number: (1) The basis on which wages are paid; (2) The number of piece work units earned if paid on piece work basis; (3) The number of hours worked; (4) The total pay period earnings; (5) The specific sums withheld and the purpose of each sum withheld; and (6) The net pay. Each worker must be paid at or above the federally established minimum wage. The Contractor must preserve all payroll records with respect to each worker for a period of three years. The Contractor must also provide the landowner with copies of all payroll records for that planting job which the Contractor is required to retain. The landowner is also required to keep these records for a period of three years.

The Act prohibits any person from utilizing the services of a tree planting contractor without first taking reasonable steps to determine that the Contractor possesses a valid Certificate of Registration. Since the Department of Forestry acts as intermediary for many landowners, the department should notify landowners for whom trees are to be planted of this requirement. Landowners employing contractors who do not possess a Certificate of Registration are in violation of the Act and could be faced with Department of Labor penalties.

### Exemptions: Persons Not Subject to the Act

- a. A landowner who performs the contracting activities on his/her own behalf, i.e., recruiting, hiring, transporting, and paying each planter directly.
- b. A person who engages in tree planting contracting activity solely within a 25-mile intrastate radius of his/her permanent place of residence and for not more than 13 weeks per year. However, if the Contractor solicits workers from a distance greater than this 25-mile limit, he/she is then subject to the Act.

**V. PRICING SCHEDULE**

- A. The Department may request planting on more acreage than called for in Attachments 2 and 3. The additional acreage will not exceed more than 25% of the acreage, without mutual consent of the Contractor. This agreement for additional acreage will be subject to the time of planting specified in Section 2.3.1.
- B. The price in effect for this contract will be \$\_\_\_\_\_ per acre.

**VI. PERFORMANCE**

- A. The Contractor will be notified of unsatisfactory work within one week after inspecting the planting. Restitution will be made in the form of nonpayment, partial payment or replanting. The form used will be the decision of the Department.

REPLANTING - When replanting is required, it will be the responsibility of the Contractor. The Contractor may contract with another qualified contractor to accomplish the replanting with the written consent of the Department in the same planting season.

- B. NON-PERFORMANCE PROVISION: The Contractor will pay the Department \$20 per acre for each area not planted as agreed upon in the contract.

Weather conditions cannot be used as a reason to not fulfill this contract.

**VII. ATTACHMENTS**

- A. ATTACHMENT 1 – State Corporation Commission Form
- B. ATTACHMENT 2 – Appomattox-Buckingham State Forest map showing planting areas
- C. ATTACHMENT 3 – Cumberland State Forest map showing planting areas
- D. ATTACHMENT 3 – List by area showing estimated tracts and acreage
- E. ATTACHMENT 4 – Contract form

**ATTACHMENT 1**

**STATE CORPORATION COMMISSION FORM**

**Virginia State Corporation Commission (SCC) registration information.**

**The bidder:**

☐ is a corporation or other business entity with the following SCC identification number: \_\_\_\_\_

**-OR-**

☐ is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**

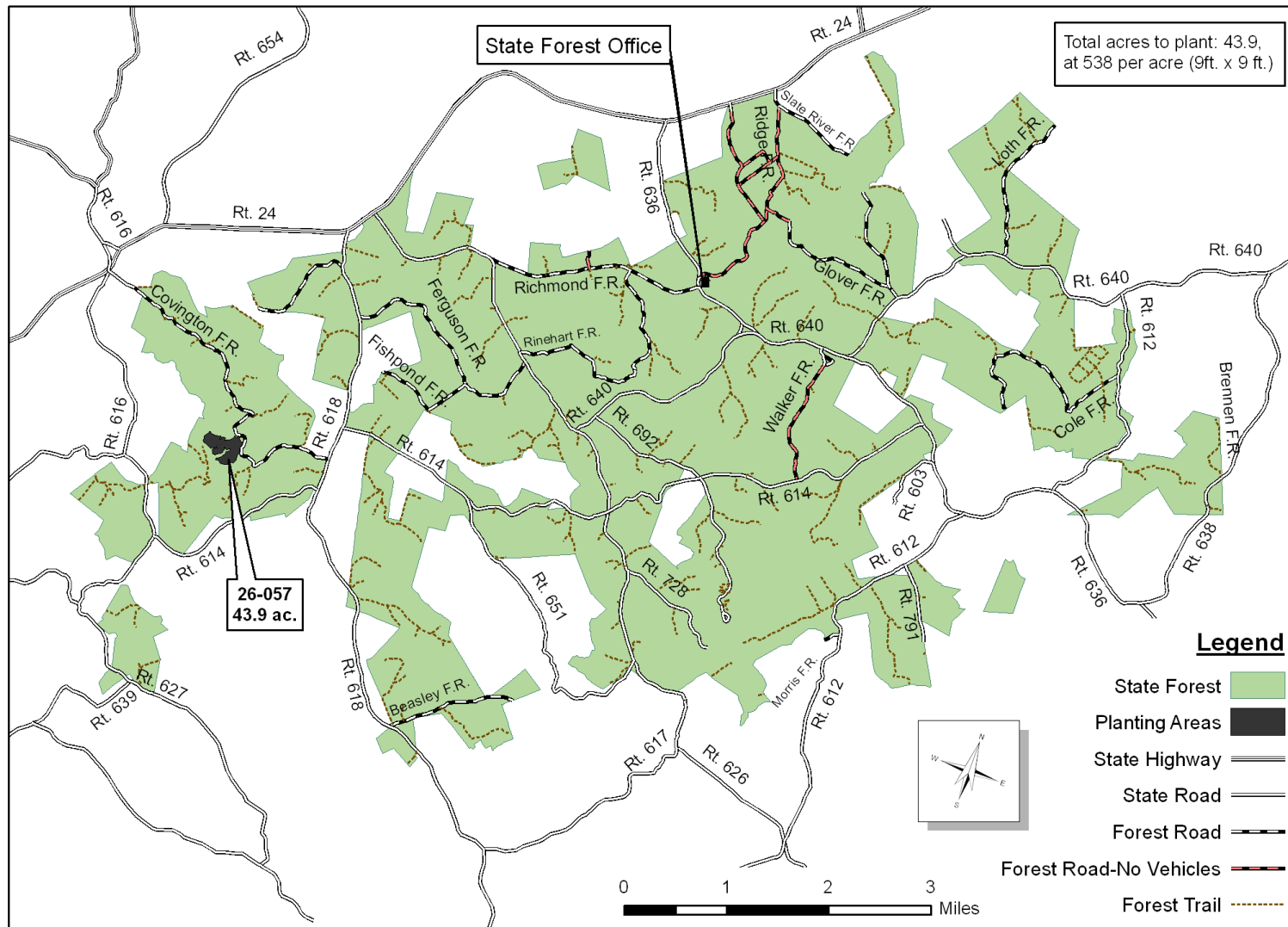
☐ is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the bidder in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder's out-of-state location) **-OR-**

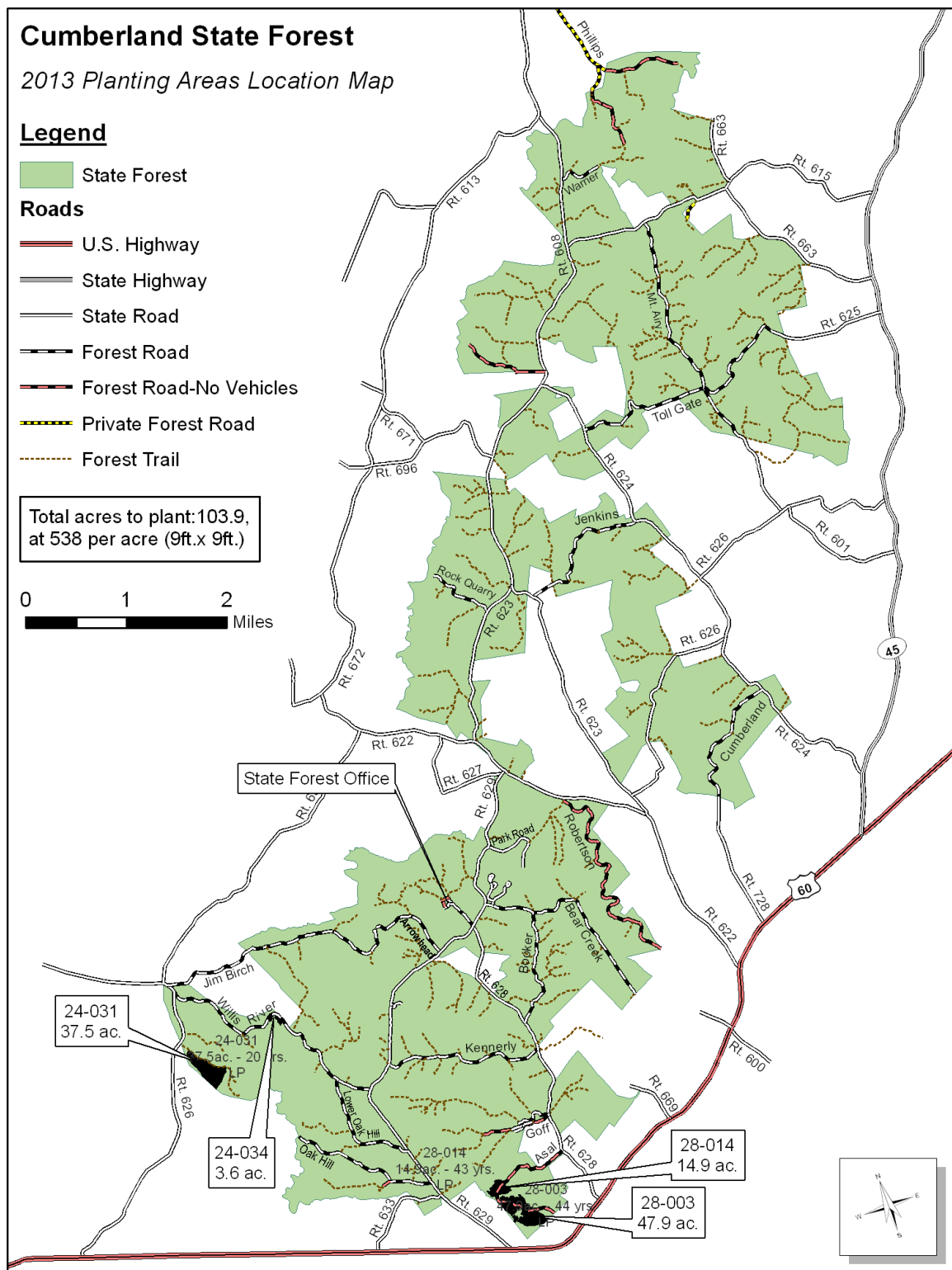
☐ is an out-of-state business entity that is including with this bid an opinion of legal counsel which accurately and completely discloses the undersigned bidder's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

**\*\*NOTE\*\*** >> Check the following box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for bids (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver): ☐

## Appomattox- Buckingham State Forest

2013 Planting Areas Location Map





**ATTACHMENT 4**

<b>2013 TREE PLANTING</b>				
FOREST	ACRES	NUMBER OF TRACTS	PLANTING TREES/ACRE	TYPE OF SITE PREP
Appomattox-Buckingham State Forest	41	1	538	Prescribed burned or straight plant.
Cumberland State Forest	113	4	538	Prescribed burned or straight plant.
<b>TOTAL</b>	154			

Note: All trees have been treated at the Nurseries for weevil control.

## STATE FOREST TREE PLANTING

This Contract entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, hereinafter called the "Contractor" and Commonwealth of Virginia, Department of Forestry, called the "Purchasing Agency."

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF SERVICES: The Contractor shall provide the services to the Purchasing Agency at \$\_\_\_\_\_ per acre, as set forth in the Contract Documents.

PERIOD OF PERFORMANCE: From February 20, 2013, through March 31, 2013.

METHOD OF PAYMENT: The Contractor shall be paid by the Purchasing Agency as set forth in Section 3.10 of the Document.

The Contract Documents shall consist of:

- (1) This signed form;
- (2) The attached purchasing description which consists of:
  - (a) The Scope of Work, and/or items description
  - (b) The General Terms and Conditions
  - (c) The Special Terms and Conditions all of which documents are incorporated herein.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

**CONTRACTOR:**

**PURCHASING AGENCY:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_